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April 25, 2006

Honorable Kimba M. Wood
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

RE: United States v. Ianniello et al, 05 Cr. 774 (KMW)

Dear Judge Wood:

In preparation for the pre-trial status conference on May 5, 2006 at 11:00 a.m. I respectfully request that there be considered the following:

1. A motion to modify defendant's bail conditions to provide for no restriction except as to travel within the Southern and Eastern Districts of New York. [This has been discussed with the Government and no agreement has been reached]

This 86-year old defendant, in precarious health, is committed to home detention under the following conditions: (a) family members and one non family member may visit him at his home; (b) he may make no outgoing telephone calls or speak with anyone calling the home except his two brothers or his wife (he may call them back if there be a need to do so); (c) he may not receive a call from his son or daughter, their spouses, or any of his five grandchildren and may not call any of them.

Unfortunately, Mr. Ianniello is no stranger to prosecutions in the Southern and Eastern Districts of New York. He was released without restriction except for travel by Judge Mishler in a case brought in the Eastern District of New York (where he was subsequently acquitted); he was released without restriction except for travel by Judge Ward in a case brought in the Southern District of New

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York (where he was subsequently acquitted); he was released without restriction except for travel by Judge Motley in a case brought in the Southern District of New York (where he was subsequently acquitted); and he was released without restriction except for travel by Judge Weinfeld in a case brought in the Southern District of New York (where he was subsequently convicted) and received a six year term of imprisonment. In all cases every bail condition and confinement were without incident.

This court has modified his bail conditions in connection with his brother's illness and death, this too without incident. He presents no risk of flight. As to the main issue, the claim of dangerousness, we stand ready to dispute the Government's assertion. We would ask for a factual hearing to end that the bail conditions be modified as prayed for.

2. The impact of the enclosed on two of the three motions made before the court, namely, the inaudibility of the Don Pepe tapes and the problems from the admission of the out of court declarations of Julius Bernstein ("Spike").

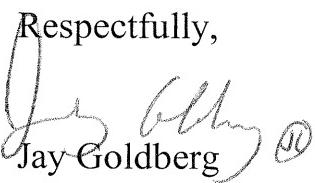
The crux of the case against Ianniello hinges upon the credibility of Bernstein. Was the union controlled by Ianniello? Did Ianniello influence the union welfare fund? Was Ianniello involved in the extortion of personnel at the medical office in the building owned by the union? It is expected that the Government will draw support from the out of court statements of Bernstein. The enclosure shows how insidious it is to make use of any Don Pepe tapes in this regard or to provide Ianniello with no remedies, even without the use of the Pepe tapes when the Government seeks to make use of alleged co-conspirators statements.

Proceeding by way of choice, the Government selected a means of recording that left inaudible words and sounds which could very well answer the questions posed. It appears that Bernstein is speaking to a person, "MD" about the subject matter and depending upon words that are missing from the tape the conversation could either be inculpatory or exculpatory of Ianniello. Who is to suffer prejudice from the inaudibility? It is submitted the Government should and counsel

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should be able to make clear that the Government had notice of the problem of audibility and willingly chose to go forward.

Once again this is in letter form since it is my understanding that the court prefers these kinds of matters to be raised in advance of a court appearance.

Respectfully,

Jay Goldberg

cc: Timothy Treanor
Assistant United States Attorney

Ann kisses MD

Ann - Hey Mikey UI

Spike and MD

Spike - UI motherfucker hit me UI

MD - Is he really?

Spike - That's what UI. My lawyer can UI

MD - UI your talking about UI

Spike - UI what I like.

MD - UI

Spike - Matty Iannello, my best friend. I said UI derive anything from this fucking union monitarily or anything UI. Who owns this place?

MD - UI

Spike - Even today UI they screen UI he's always paying the tab UI

Spike to bathrooms

Comments